

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10163 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DILIPBHAI DHANABHAI AHIR

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner

Ms.Ami Yagnik, A.G.P. for Respondents

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 27/02/97

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner-detenu has brought under challenge the detention order dated 23rd April 1996 rendered by respondent No.2 u/s.3(1) of the Gujarat Prevention of Anti-social Activities Act, 1985 (Act No.16 of 1985), for short "the PASA Act".

2. The grounds on which the impugned order of

detention passed appear at Annexure : B to the petition. They inter alia indicate that the petitioner has been indulging in criminal and anti-social activities of causing hurt to the innocent people with the aid of deadly weapon and extorting money and committing various offences under the Indian Penal Code resulting in fear in the mind of people. The detaining authority has placed reliance on two cases, one of 1995 and one of 1996 registered with Upleta Police Station, respectively under Sections 452, 323, 504, 506(2), 114 and 394, 504, 506(2), 114, 427, 352, 447 Indian Penal Code. The particulars of such offences have been set out in the grounds of detention.

3. It has been recited that the detenu's anti-social activity tends to obstruct maintenance of public order and in support of such conclusion statements of witnesses have been relied upon. They speak about the incidents indicating beating in public the concerned witnesses, creating atmosphere of fear amongst the people collected at the time of such incidents.

4. It is on the aforesaid incidents that the detaining authority has passed the impugned order of detention while also relying upon the aforesaid cases lodged against the petitioner. The petitioner has been stamped as a dangerous person within the meaning of section 2(c) of the PASA Act.

5. The impugned order of detention has been challenged on number of ground, inter alia, on the ground that the detaining authority has relied upon previous detention order bearing No. MG-PASA-8-94 dated 1.4.1994, which detention order was set aside by this Court on 26.10.1994. Reliance in this connection has been placed upon two decisions of the Apex Court, one appearing in the case of Chhagan Bhagwan Kahar V/s. N.L.Kalna, reported in AIR 1989 SC 1234 and another appearing in the case of Ramesh V/s. State of Gujarat, reported in AIR 1989 SC 1881. In the first decision the Apex Court observed that when a detention order is quashed by the Court issuing a high prerogative writ like habeas corpus or certiorari the grounds of the said order should not be taken into consideration either as a whole or in part even along with the fresh grounds of detention for drawing the requisite subjective satisfaction to pass a fresh order. In the second decision also the same principle has been emphasised with an observation that it cannot be said that earlier cases were mentioned in later order only for limited purpose of showing antecedents of detenu.

6. In my opinion the aforesaid decisions of the Apex Court would clinch the issue in so far as the impugned order of detention is concerned.

7. Hence this petition is allowed. The impugned order of detention is hereby quashed and set aside. The petitioner - Dilipbhai Dhanabhai Ahir shall be forthwith set at liberty if he is not required to be detained in any other case. Rule made absolute accordingly.

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